

PT 97-30
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

GRAND ENCAMPMENT of)	
KNIGHTS TEMPLAR,)	Docket No: 93-16-1241
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for 1993 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.S: 13-09-404-015
STATE OF ILLINOIS)	13-09-404-041
)	
)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Ms Anne E. Larsen of Frank Edelman, Ltd. appeared on behalf of the Grand Encampment of Knights Templar.

SYNOPSIS: This proceeding raises the issue of whether 50% of the above captioned real estate which is not leased to commercial tenants (hereinafter referred to as "the portion in dispute") should be exempt from 1993 real estate taxes under 35 ILCS 205/19.7.¹ In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used for such charitable or beneficent

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 ILCS 205/1 et seq).

purposes and not leased or otherwise used with a view to profit ...[.]

The controversy arises as follows:

On April 11, 1994, the Grand Encampment of Knights Templar (hereinafter the "Knights" or the "applicant"), through counsel, filed a real estate exemption complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Said complaint alleged that the subject property was exempt from taxation under then-existing version of Section 19.7. The Board reviewed applicant's complaint and thereafter recommended to the Department of Revenue (hereinafter the "Department") that "no action" be taken on the requested exemptions due to "inadequate documentation of exempt use and what part of [the] building, if any, is [in] exempt use." (Dept. Group Ex. No. 1.

On October 27, 1995, the Department accepted this recommendation by issuing a certificate finding that the subject parcel is not in exempt ownership and not *primarily* (note emphasis - 50% does not suggest *primarily* charitable use) used for exempt purposes.

Applicant filed a timely request for hearing on November 6, 1995. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on September 6, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the portion in dispute not be exempt from real estate tax for the 1993 assessment year.

FINDINGS OF FACT:²

A. Preliminary Considerations and Description of the Subject Premises

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property is not owned by an exempt organization

². In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: Preliminary Considerations and Description of the Subject Property (Findings 1 through 5); Applicant's Organizational and Membership Structure (Findings 6 through 23); Applicant's Financial Structure (Findings 24 through 26); The Knights Templar Educational Foundation (Findings 27 through 44); The Knights Templar Eye Foundation (Findings 45 through 55) and The Holy Land Mission (Findings 56 through 59).

and not primarily used for exempt purposes, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. The subject property is located at 5097 North Elston Ave, Chicago, IL. It is identified by Cook County Parcel Numbers 13-09-404-015 and 13-09-404-041. Dept. Group Ex. No. 1.

3. The Knights assumed ownership of the entire subject property, approximately half of which is located on each of the aforementioned Permanent Index Numbers, via a trustee's deed dated August 22, 1991. *Id*; Applicant Ex. No. 2.

4. The subject property is improved with a 16,000 square foot building, the totality of which is divided between a lower (or basement) level and three upper-level floors. Applicant leases all of the space located on the second and third (or upper level) floors to commercial tenants.³ Dept. Group Ex. No.1; Applicant Ex. No. 3; Applicant Group Ex. No. 4; Tr. p. 13.

5. The Knights use all of the remaining space for their own purposes, none of which are associated with actual performance of applicant's organizational rituals. Applicant does however, use all of the first floor space to house its administrative offices. It also employs half of the basement to store file cabinets, desks, supplies, pamphlets, etc. and divides usage of the remaining half between library facilities and an area wherein the staff of applicant's organizational magazine perform editorial work. Tr. p. 13.

B. Applicant's Organizational and Membership Structure

6. The Knights are an order of Christian Knighthood within the Masonic fraternity. They were originally formed when a convention met to adopt and ratify its initial Constitution in June of 1816. Applicant Ex. No. 15; Tr. p. 43.

³. In its brief at pp. 2 - 3, applicant concedes that this portion of the building, which occupies 50% thereof, is not in exempt use. Accordingly, I shall devote any remaining Findings of Fact to information concerning applicant's organizational and financial structure as well as its use of the remaining 50%.

7. Applicant was subsequently incorporated by a special Act of Congress. This Act, passed on February 4, 1904, created the Trustees of the Grand Encampment of Knights Templar. Applicant Ex. No. 15.

8. The Knights have been exempt from federal income taxation under Section 501(c)(10) of the Internal Revenue Code since December 31, 1971. Applicant Group Ex. Nos. 6 and 7.

9. Applicant's current Constitution (hereinafter the "Constitution") defines a Knight Templar as "a Mason upon whom the Orders of Red Cross, Knight of Malta and Knight Templar have been conferred by any organization recognized by the Grand Encampment as having authority to confer the same." Applicant Group Ex. No. 6.

10. The Constitution further provides for a supreme governing body known as the Grand Encampment and regional governing authorities known as Grand Commanderies. *Id.*

11. The Grand Commanderies are authorized to fix the time at which members of its constituent Commanderies shall pay annual dues. They are also empowered to prescribe the penalty for non-payment of same and fix the terms for restoring the memberships of those so penalized. *Id.*

12. The Grand Commanderies are, under terms of applicant's Constitution, divided into smaller, localized units known as Commanderies that are made up "of at least three Knights Templar, hailing from three separate Commanderies and acting under lawful Warrant, or of nine or more Knights Templar acting under a lawful Dispensation or Charter." *Id.*

13. Applicant's Constitution grants each Commandery the right to levy and collect such annual dues and per capita assessments as it may deem necessary to defray its expenses. The constitution further provides that:

No Commandery may confer the Orders [of Knighthood] for a less fee [sic] than Forty Dollars (40.00). This fee may not be remitted directly or indirectly.

Id.

14. Applicant's statutes provide that only the following classes of Masons are eligible to petition for knighthood:

A. Those who have attained the rank of Master Mason and Royal Arch Mason, affiliated both in Lodge and Chapter; or,

B An affiliated Master Mason who has petitioned a Chapter of Royal Arch Masons for the Capitular Degrees; or,

C. A Royal and Select Mason who belongs to a Grand Commandeer that imposes Cryptic Degrees as prerequisites to Orders of Knighthood.

Id.

15. Those who petition for knighthood must also be firm believers in the Christian religion, meet certain well-defined residency requirements and possess the physical ability to "conform to the ceremonies of the Order," or, obtain waiver by Dispensation from the Grand Commander in cases of physical inability to perform same. *Id.*

16. Candidates who possess the above qualifications must also submit a petition that recites their name, birth date, residence, occupation and Masonic qualifications. The petition must also state that the candidate is a firm believer in the Christian religion, has read the petition and signed same. *Id.*

17. The petition must also be signed by two members of the Commandeer wherein the candidate is seeking knighthood, each of whom must recommend favorable action on the petition and vouch for the candidate's good moral character and Masonic standing. *Id.*

18. After each petition is submitted, it may then be referred to a three-member committee that can personally interview the candidate if he is not known to the members of same. The committee then issues a written report which may be favorable or unfavorable to the petitioner's candidacy. *Id.*

19. Only the fact of the report, and not its substance, are entered in the minutes of the Commandery. Each member of same must then vote on the

petition by secret ballot unless excused therefrom by the appropriate Commandery official before balloting begins. *Id.*

20. A candidate can not be elected to knighthood except upon a unanimous vote of the Commandery's membership. One who does not receive such unanimous vote can not inquire into the reason for any blackball ballots or obtain disclosure thereof. *Id.*

21. Those elected to knighthood are subject to suspension or expulsion for non-payment of dues or other "un-Masonic" or "unknightly conduct." While a commandery official, known as the Eminent Commander, is responsible for supervising and determining whether a delinquent member should be required to remit dues because of illness, infirmity or financial inability, this same official may recommend against remission if he sees fit. *Id.*

22. Should the Eminent Commander make such a recommendation, he must then undertake certain well-defined preliminary steps, which include appointing an *ad hoc* investigatory committee that reports first to the Eminent Commander and then to the Commandery as a whole, before beginning the complex suspension process.⁴ *Id.*

23. Those suspended solely for non-payment of dues may be restored to membership provided that they make written application therefor and obtain approval thereof via a majority vote of their Commandery. They must also satisfy whatever payment requirements the Commandery may impose, including full or partial payment of any dues in arrears. *Id.*

C. Applicant's Financial Structure

24. Applicant has no capital stock or shareholders. Its fiscal year begins on July 1 and ends on July 30 of each calendar year. Applicant Group Ex. No. 14.

⁴. For details about this process, which includes formal notice and hearing requirements, see Applicant Group Ex. No. 6.

25. An audit for the three fiscal years ending June 30, 1994⁵ establishes that applicant received revenue from the following sources during that time:

<u>SOURCE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Grand Commandery Dues	\$2,415,699.00	52.4% ⁶
Subordinate Commandery Dues	\$ 39,206.00	<1%
Dispensation Fees	\$ 100.00	<1%
Interest and Dividend Income	\$ 286,730.00	6.2%
Net (Loss) on Sale of Investments	\$ (2,942.00)	<1%
Rituals Purchased by Commanderies	\$ 21,967.00	<1%
Sale of Printed Materials and Supplies	\$ 82,620.00	2%
Sale of Data Processing Services and Supplies	\$ 140,748.00	3%
Sale of Public Relations Items	\$ 27,532.00	<1%
Magazine Subscriptions	\$ 5,172.00	<1%
Sale of Jewels	\$ 59,310.00	1.3%
Postage Recovered	\$ 13,419.00	<1%
Net Income from Investments of Permanent Fund	\$ 103,768.00	2.2%
Educational Foundation - Reimbursement of Pro-Rata Expense of the Grand Encampment Office	\$ 180,000.00	3.9%

⁵. These years which commenced July 1, 1991 and ended June 30, 1994, ostensibly cover the triennium for which applicant's external auditor, Dennis I. Blevit and Company, Ltd, performed its audit. For further information about the procedures employed therein, see, Applicant Ex. No. 15.

⁶. All percentages shown in this section are approximations derived by dividing the category of income or expense (e.g. Grand Commandery Dues) by the appropriate total. Thus, for example, \$2,415,699.00/\$4,605,505.00 = .524 (rounded) or approximately 52%.

<u>SOURCE</u> (Cont'd).	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Building Rental	\$ 345,298.00	7.5%
Receipts from Fund Raising Activities	\$ 830,411.00	18%
Miscellaneous Receipts	\$ 56,467.00	1.2%
Total revenues	\$4,605,505.00	100%

Applicant Ex. No. 15.

26. The audit further discloses that applicant's expenses for the same three-year period were as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Fraternal Costs ⁷	\$ 695,977.00	18%
Magazine Costs ⁸	\$1,873,462.00	48%

<u>EXPENSE</u> (Contd.)	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Data Processing Costs ⁹	\$ 206,717.00	5%
Office Building Costs ¹⁰	\$ 300,159.00	8%
Administrative Costs ¹¹	\$ 690,512.00	18%

⁷. These costs were mostly attributable to various expense allowances for the Grand Master and other Grand Encampment officials. Also included therein were various committee and ritual expenses, mileage and per diem allowances, jewel repair and plaque expenses and printing costs.

⁸. This group of expenses included salaries, printing, postage for mailing magazines and postage costs for returned magazines.

⁹. These expenses were attributable to salaries, maintenance and equipment and supplies.

¹⁰. Expenses grouped in this category included water, gas, electricity, waste removal, building cleaning, building supplies, building maintenance and repairs, building insurance, real estate taxes, moving expenses and miscellaneous building expenses.

¹¹. This group of expenses included the following: salaries; payroll taxes; employees' group medical expenses; employees pension contributions; office premise rental; telephone; electricity; stationary and printing; postage; shipping supplies; equipment; audit; fidelity bonds and insurance; general

Other Costs ¹²	\$	27,529.00	<1%
Office and Data Processing Equipment Purchases Capitalized	\$	(12,034.00)	<1%
Depreciation	\$	<u>74,279.00</u>	2%
Total expenses	\$	3,856,601.00	100%

Id.

D. The Knights Templar Educational Foundation

27. The Knights Templar Educational Foundation of the Grand Encampment of Knights Templar of the United States (hereinafter the "KTEF" or the "Foundation") dates to 1922, when it was created at the Grand Encampments Triennial Conclave in New Orleans, Louisiana. Its original purpose was (and remains) making loans to "deserving students to secure an education." *Id*; Tr. p. 23.

28. Initial funding for the KTEF was provided by a \$100,000.00 endowment from the Knight's Permanent Fund. This endowment was augmented by an assessment of \$1.00 per member for a period of nine years, part of which constituted a supplementary endowment. The Grand and Subordinate Commanderies were to use the remaining part for loans to deserving students. Applicant Ex. No. 15.

29. The Grand Encampment subsequently increased KTEF assessments to \$9.00 per member. It also relinquished administration of the KTEF to the respective Grand and Subordinate Commandries, which then became responsible for disbursing funds under supervision of the Grand Encampments Committee on the Educational Foundation. *Id.*

30. The Foundation has been exempt from federal income taxation, under Section 501(c)(3) of the Internal Revenue Code since February 17, 1976. It was

maintenance; general supplies; artwork; film slides and reference materials and miscellaneous.

¹². These costs were attributable to five categories: contributions to the George Washington Masonic Memorial Fund; Contributions to the Order of DeMolay; Contributions to the Youth Organizations and Investment Fees. For details and specific amounts on these costs and all the expenses detailed above, see, Applicant Ex. No. 15.

also granted an exemption from payment of Use and related taxes in the State of Illinois on January 29, 1993. Applicant Group Ex. No. 7; Applicant Ex. No. 8.

31. KTEF is currently administered by 50 regional divisions. The headquarters for all 50 divisions are located in those areas of the portion in dispute wherein applicant maintains its administrative offices. Tr. p. 21.

32. At the present time, KTEF loans are funded entirely by interest income. The Foundation derives this income from the interest it charges on loans repayments and uses a portion of these proceeds to fund some student scholarships. Applicant Ex. No. 15

33. The Foundation established these scholarships "to enable and encourage young men and young women of outstanding ability and promise to procure a college or post-graduate education no matter what financial circumstances exist." Such scholarships are distinct from KTEF loans because the latter are awarded primarily on the basis of financial need. Applicant Ex. No. 10.

34. The Foundation made 17 such awards during 1993. The aggregate monetary value of these awards was approximately \$14,000.00 Tr. p. 27.

35. KTEF received approximately 5,000 loan requests during 1993. It granted nearly 478 of these requests. While the aggregate monetary value of these loans was roughly \$900,000.00, KTEF rejected some applications for lack of assurances that the money would be repaid. It also received some loan application withdrawals from people who discovered that they would have to pay the money back. Tr. pp. 24, 39.

36. KTEF does not make loans to freshman or sophomore undergraduates. It does nevertheless make loans to those pursuing vocational, technical or post-graduate education. Applicant Ex. Nos. 9 and 10.

37. Maximum loan amounts are \$3,000.00 for one scholastic year or the same amount per year when two years are required. In any event, no one student may borrow more than \$6,000.00 from the Foundation. *Id.*

38. Those seeking KTEF loans must submit written applications to the appropriate Division committee, which is the one situated in the geographic area wherein they reside. Each application must be accompanied by the personal statement of a guarantor as well as two personal and two instructor references. Applicant Ex. Nos. 9 and 10.

39. The respective committees then review the applications they receive and authorize loans based on their appraisals of the candidates' character, dependability and scholarship ability. *Id.*

40. The KTEF charges 5% interest on all of the loans it makes. While interest does not start until the date of graduation or withdrawal from the educational institution being attended, all Foundation loans must be repaid within four years of same.¹³

41. All loans must be evidenced by a promissory note and repaid according to the above terms unless the student decides to continue his or her education in graduate school. In this case, the Committee may, after making appropriate review, allow the student to postpone payment of the principal until after the advanced degree is earned, provided that the student is devoting full time to his or her graduate work. Applicant Ex. Nos. 9, 10 and 15.

42. An unspecified portion of those who receive KTEF loans defaulted on their commitments. All of the local divisions are authorized to "exalt anything within their power to collect the money at their level" in the event of a default. If these initial efforts prove unsuccessful, the defaulted account is referred to the Grand Encampment, which then seeks enforcement through a collection agency. Tr. p. 40.

43. KTEF had the following unaudited Statement of Assets, Liabilities and Fund Balance for the year ended December 31, 1993:

¹³. The exact repayment schedule is as follows: 10% of the loan must be repaid within the first year, 20% within the second year, 30% within the third year and 40% in the fourth year. Applicant Ex. Nos. 9 and 10.

A. Assets:	
Cash	\$1,091,189.00
Invested Funds, Savings Accounts, Etc.	\$1,940,832.00
Knights Templar Scholarship Account	\$ 177,744.00
Student Loans Outstanding	\$5,578,876.00
Miscellaneous Assets	\$ 1,494.00
Furniture and Fixtures	<u>\$ 11,241.00</u>
Total Assets	<u>\$8,801,376.00</u>

B. Liabilities:	
Committee on the Educational Foundation	\$ 15,870.00
Other Liabilities	<u>181.00</u>
Total Liabilities	\$ 16,051.00

C. Fund Balances:	
Received from Assessments	\$3,612,836.00
Donations	\$1,189,646.00
Operating	<u>\$3,982,843.00</u>
Total Fund Balances	<u>\$8,785,325.00</u>

Total Liabilities and Fund Balance	<u><u>\$8,801,376.00</u></u>
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Applicant Ex. No. 15

44. KTEF'S unaudited Statement of Changes in Operating Fund Balances for the year ended December 31, 1993 was as follows:

A. Balance,	
Beginning of Year	<u>\$3,967,619.00</u>
B. Additions:	
Interest on Student Loans	\$ 180,630.00
Interest on Investments	\$ 135,751.00
Other	<u>\$ 12,240.00</u>
Total Fund Balance	<u>\$ 328,621.00</u>
C. Deductions:	
Operating Costs ¹⁴	\$ 175,240.00
Charge-Offs of Uncollectible Loans	\$ 27,515.00
Scholarship Grants	\$ 14,300.00
Due to the Committee on	

¹⁴. These costs included salaries, rents and unspecified "other." For specific amounts and details, see, Applicant Ex. No. 15.

The Educational Foundation, 5% of Interest Income	\$ 15,818.00
Extra-Ordinary Loss	\$ 74,963.00
Unspecified Other	\$ 5,561.00
Total Deductions	<u>\$ 313,397.00</u>

Balance, End of Year \$3,982,843.00

Id.

E. The Knights Templar Eye Foundation

45. The Knights Templar Eye Foundation, Inc. (hereinafter the "Eye Foundation") was incorporated under the Corporation Law of the State of Maryland on March 1, 1956. Its Articles of Incorporation provide, *inter alia*, as follows:

A. That its corporate purposes include but are not limited to the following: (1) To use its funds for research, treatment and hospitalization of those who suffer from disease or injury to the eye, which, if left untreated, might result in blindness provided that admission for treatment of such persons shall be without regard to race, color, creed, etc. and further provided that the treatment of patients for this purpose shall be free and limited to persons unable to pay, so that funds will be used exclusively for "charitable and scientific purposes ...[;]" (2) To receive and maintain a fund or funds and apply the income and principal thereof to promote all objectives and purposes of the corporation, including making gifts and grants to other corporations or associations operated for similiar purposes; (3) To collect, receive and maintain a fund or funds by subscription or otherwise and apply the income and principal thereof to the promotion of the above purposes and to use as a means to those ends, research, publication, the employment of experts and the and the establishment and maintenance of committees, offices, and agencies and other means which, from time to time, shall be deemed advisable and expedient.

B. That no part of the net earnings shall inure to the pecuniary benefit of any member of the corporation or individual connected therewith;

C. No substantial part of the corporation's activities shall be devoted to participating in or promoting political concerns;

D. The corporation shall have no capital stock;

E. The corporation's membership shall consist of a 13-member Board of Trustees, which is responsible for managing the corporation's daily business affairs, and certain other members of the Grand Encampment;

F. The corporation shall have the following officers: President, Vice-President, Secretary, Treasurer and such other officers as the Board of Trustees shall designate and duly elect;

G. If the corporation should ever be dissolved, all of the assets thereof shall first be used to pay or satisfy such corporate debts as may be due and owing at the time of dissolution and then conveyed or distributed to such non-profit religious, charitable, scientific, literary or educational organization(s) as the members of the corporation shall, in their absolute discretion, deem fit.

Applicant Ex. No. 11.

46. The Eye Foundation has an advisory committee that consists of several prominent ophthalmologists and eye surgeons who give of their time and experience without compensation. Most of its financing comes from membership assessments imposed on all Knights Templar. It also derives some funding from contributions and memorials in various denominations. Applicant Group Ex. No. 12.

47. Those who donate the sum of \$1,000.00 become members of the Grand Master's or Grand Commander's Clubs, while persons donating lesser amounts can become patrons, associate patrons, benefactors or life sponsors.¹⁵ *Id.*

48. 80% of all funds raised for the Eye Foundation goes to pay for medical treatment. The remaining 20% is divided equally between research grants and administrative costs. Tr. pp. 55 - 56.

49. Eye Foundation funds help to defray the costs associated with surgeries or other treatments for eye injuries or diseases that may cause blindness if left untreated. During 1993, these funds provided assistance to approximately 1,100 needy persons, none of whom were required to make any repayments. *Id.*; Tr. p. 31.

50. The Eye Foundation also made nearly \$4 million in case payments during 1993. These payments funded the following services:

¹⁵. For the specific contribution amount requirements and other related details, see, Applicant Group Ex. No. 12.

A. Correction of strabismus (cross eyes) in children, which it provides free of charge but limits to those who demonstrate that they are unable to pay;

B. Those parts of surgery and hospitalization costs not covered by Medicare, provided that each bill does not exceed the Eye Foundation's stated fee schedule;

C. Any costs not covered by Medicare that are associated with glasses, prostheses or contact lenses prescribed by a doctor after surgery, provided that such costs do not exceed the Foundation's stated fee schedule.

Id.

51. Recipients of Eye Foundation assistance are required to pay for miscellaneous tests. They are not, however, responsible for the actual cost of surgery. Nor are they obligated to pay any surgical or hospital costs that exceed the Eye Foundation's allowance, provided that they can not afford same.

Id.

52. The Eye Foundation also produces films about various eye diseases and surgeries. It also accepts applications for research grants which it reviews with an advisory committee of ophthalmologists. Tr. pp. 31 - 33, 49.

53. The Eye Foundation received nearly 70 such applications, but funded only 15, during 1993. Its total cost for these awards, which did not have to be repaid, was approximately \$300,000.00. *Id.*

54. The Eye Foundation's administrative offices are located in Springfield, IL. Those seeking assistance therefrom must obtain sponsorship from a Knight Templar. *Id.*

55. The sponsor is responsible for interviewing the person seeking assistance or his family. He must also complete and submit all requisite paperwork¹⁶ to the Foundation, which authorizes all applications for assistance.

Id.

¹⁶. For details about these forms, which include various applications, surgical certificates and permission slips, see, Applicant Ex. No. 12.

F. Holy Land Mission

56. The Holy Land Mission is a 10-day pilgrimage for Christian ministers. All of its funding comes from the Knights, who raise money for the pilgrimage through their Commanderies. Applicant Group Ex. No. 13; Tr. pp. 34 - 37; 43.

57. Applicant uses this money to cover costs of the mission, which run approximately \$1,300.00 per minister. These costs include round trip air fare from New York to Israel as well as lodging and two meals (breakfast and dinner) per day. Tr. pp. 35, 43 - 44.

58. A minister need not be a member of the Knights in order to go on the pilgrimage. He must however be affiliated with a Christian ministry and obtain a recommendation from one of the Knights. Applicant Group Ex. No. 13; Tr. pp. 34 - 37; 43.

59. The ministers travel in two separate groups, each one consisting of approximately 47 ministers. During their pilgrimage, the ministers visit various sites throughout Israel including the Wailing Wall, Galilee and the Dead Sea. Tr. pp. 35, 43.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the portion in dispute from 1993 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said portion, as well as all remaining parts of the subject parcels, do not satisfy the requirements for exemption set forth in 35 **ILCS** 205/19.7 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for

agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 205/19.7 In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used or such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

35 **ILCS** 205/19.7

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist.

1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: first, that the word "exclusively," when used in Section 205/19.7 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987), (hereinafter "MTA"). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

In order to apply the above criteria to the present case, I must be cognizant of the fact that only the Knights themselves are the applicant herein. This consideration is critical because a portion of the following analysis will demonstrate that KTEF does not qualify as a "charitable institution." Moreover, other parts of the ensuing discussion will demonstrate that the Eye Foundation and the Knights are separate legal entities, and, that the applicant has failed to prove that the former uses any part of the portion in dispute for administrative purposes. Therefore, I conclude that the threshold inquiry in

this case is whether the Knights themselves, and not the KTEF or the Eye Foundation, qualify for exempt status.

Resolving this inquiry requires that I first ascertain the applicant's primary function. Applicant's Constitution describes a highly restrictive and secretive selection process. In addition, the audit admitted as Applicant Ex. No. 15 establishes that the Knights derive most of their revenues from membership dues and devote nearly all of their expenditures to internal operations rather than charitable donations. Based on these consideration, I conclude that the Knights, themselves, are primarily a fraternal organization. Therefore, any other activities which take place under its sponsorship, including the Holy Land Mission, must be considered incidental to that purpose.

This conclusion is consistent with the line of decisions wherein our courts have discarded the notion that Masonry is an inherently charitable enterprise. Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993), citing People ex. rel Nelson v. Rockford Masonic Temple Building Association, 348 Ill. 567 (1932); People ex. rel Thompson v. Dixon Masonic Lodge, 348 Ill. 593 (1932).

These decisions, as well as MTA, *supra*, have rejected this theory by reasoning that Masonry is primarily a fraternal enterprise. As such, Masonic endeavors are inherently designed for the primary benefit of fraternal members rather than the public at large. MTA, *supra*, at 797. Consequently, any beneficent works attributable to such operations are incidental to the Masons' non-exempt primary function. Therefore, these works are legally insufficient to satisfy the "public benefit" aspect of charity which our courts have long recognized as being fundamental to this particular body of law.¹⁷

¹⁷. For additional analysis of the economic-based public benefit aspect, see, Turnverein "Lincoln" v. Department of Revenue, 358 Ill. 135 (1934); Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991); DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461 (2nd Dist. 1995). For further analysis as to how this and other requirements are used to determine charitable status (or lack thereof), see, discussion of Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) *infra*.

In Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), (hereinafter "Korzen"), the Illinois Supreme Court established the now well-settled guidelines for determining "charitable" status under Section 205/19.7 and its predecessor provisions. These standards begin with the following definition of "charity," which the court used to analyze whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable institutions:

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

In Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991), (hereinafter "ARC"), the court held that an organization that derived most of its revenues from membership dues and which expended roughly 70% of its gross receipts on building expenses, dues and district meetings did not

qualify for exemption under the second and third prongs of the test articulated in Korzen. ARC at 919.

Here, the audit admitted as Applicant Group Ex. No. 15 establishes that this applicant obtains most of its revenues from dues and other fees imposed on its membership. Said audit further establishes that while the Knights spend only 8% of their gross receipts on building costs, they do not allocate any appreciable portion of the remainder to charitable donations or other exempt activity. Rather, applicant uses these monies to fund its magazine and other costs associated with its fraternal operations. Consequently, I conclude, as did the ARC court, that this applicant's financial structure is inconsistent with that of a "charitable institution" described in parts two and three of Korzen.

It also appears that the Knights' membership structure does not conform to part five of the Korzen test, which requires proof that the applicant "not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses." As noted above, the Knights adhere to a very restrictive and secretive selection process which culminates in secret balloting and includes, among other things, sponsorship and Masonic qualification requirements that effectively prohibit members of the general public from joining its order. More importantly, applicant's Constitution specifically provides that the \$40.00 Order fee may not be waived under any circumstances.

In light of these obstacles, and those evidenced by the provisions of applicant's Statutes which establish a largely discretionary policy regarding waiver of delinquent dues, and also, impose repayment requirements on Knights suspended for non-payment of same, I find it factually impossible for this applicant's operations to fall within the criteria established in Korzen. Therefore, for all the above-stated reasons, I conclude that the Knights

themselves are neither a "charitable institution" within the meaning of current Illinois law nor entitled to exemption under Section 205/19.7.

Applicant attempts to alter the preceding conclusion by relying on its exemption from federal income tax. While this exemption provides evidence that the Knights are organized for exempt purposes, it does not establish that the portion in dispute satisfied the statutory requirement of being "actually and exclusively used for ... charitable or beneficent purposes" during 1993. Moreover, even though this exemption establishes that Knights are an exempt organization for purposes of the relevant Sections of the Internal Revenue Code, these Sections neither preempt Section 205/19.7 nor establish that this applicant falls within the definition of "charitable institution" established in Korzen. Consequently, applicant's exemption from federal income tax is not dispositive of the present matter. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970).

The Knights also rely on Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991), (hereinafter "EHC"). There, the court sustained an exemption for part of a leasehold that was actually used to provide management and administrative services to the appellant's exempt affiliate. In making this holding, the court took great pains to limit the exemption to those portions of the leasehold which appellant had proven were "reasonably necessary" to further its affiliate's efficient administration. Thus, it held against exempting other portions of the leasehold which applicant failed to prove were used for similiar purposes. EHC at 574 - 575.

The present case is factually similiar to EHC in that both the appellant therein and the Knights herein are non-exempt entities which argue that their use of the real estate in question is "reasonably necessary" to further what they allege are specifically identifiable exempt purposes. Nevertheless, it must be remembered that the uses found to be exempt in EHC were those that furthered the work of appellant's exempt affiliate. Thus, it appears that the

logic contained therein is inapplicable to the present case unless applicant proves both of the following propositions by clear and convincing evidence: first, that the KTEF and/or the Eye Foundation are exempt entities under Korzen; and second, that applicant's use of the portion in dispute is "reasonably necessary" to ensure efficient administration of any exempt activities these entities may conduct.

KTEF does not qualify as an exempt entity under Korzen because its operations are more akin to those of a commercial lender than a "charitable institution." This finding draws support from several sources, chief among which is the evidence establishing that KTEF does not make loans to all who apply for them. Rather, it violates the fifth prong of Korzen by imposing obstacles that include an exacting application process.

This process violates the "gift" quality of charity alluded to in Crerar v. Williams, supra, because it contains guarantor and other repayment assurance requirements that are distinctly non-charitable. Given that these and other repayment requirements caused KTEF to reject nearly 90% of the loan applications it received during 1993,¹⁸ I also fail to see how the Foundation "dispense[s] charity to all who need and apply for it" as required by Korzen.

KTEF further requires that all loans be evidenced by promissory notes. It also adheres to a very strict repayment schedule which exacts interest payments even if the student elects to pursue an advanced degree. Based on these considerations, as well as the evidence establishing that KTEF empowers its divisions to "exalt anything within their power" to collect delinquent loans and seeks enforcement of same through a collection agency if such efforts prove unsuccessful, I conclude that the Foundation's operations, viewed in their totality, do not conform to those of a "charitable institution."

¹⁸. I derived the 90% figure by first dividing the number of loans granted (478) by the number of applications received (5,000). These calculations produced a rounded yield of .0946, which translates an approved loan percentage of approximately 10%. I then subtracted that 10% from 100% to arrive at the percentage of rejected loan applications, which equals 90%.

One might seek to alter the preceding conclusion by arguing that the scholarships provide evidence of exempt operations. However, the Foundation awarded only 17 scholarships during 1993. This amount appears to constitute a mere fraction of, and therefore be incidental to, the 478 loans which the Foundation made in the same year.

Additional evidence about the incidental nature of these scholarships and their relationship to KTEF's loan program can be found in the audit admitted as Applicant Ex. No. 15. This document establishes that while 63% of KTEF's total assets for the year under review¹⁹ were attributable to outstanding student loans, only 2% of same²⁰ were ascribed to its scholarship account.

The audit further discloses that 55% of the total additions to KTEF's fund balance for 1993²¹ came from interest on student loans. Nevertheless, it also indicates that the 4.6% of abatements therefrom attributable to scholarship grants²² is less than the 8.8% of such deductions that KTEF incurred because of uncollectible student loans.²³

Mathematical percentages may not, *ipso facto*, establish that a given program is incidental to another. Nonetheless, in cases like the instant one, where percentages establish a relationship between two programs, and also, indicate that financial considerations affecting KTEF scholarships are *de minimus* vis-a-vis those pertaining to its loans, one can not escape the conclusion that the former are incidental to the latter. Therefore, any attempts to establish KTEF's exempt status by reference to its scholarship program must fail.

¹⁹. $\$5,578,876.00/\$8,801,376.00 = .6339$ (rounded) or 63%.

²⁰. $\$177,744.00/8,801,376.00 = .0202$ (rounded) or 2%.

²¹. $\$180,630.00/\$328,621.00 = .5496$ (rounded) or 55%.

²². $\$14,300.00/\$313,397.00 = .0456$ (rounded) or 4.6%.

²³. $\$27,515.00/313,397 = .08779$ (rounded) or 8.8%.

The above considerations make it almost factually impossible for the portion in dispute, part of which houses KTEF's headquarters, to be used in a manner that would qualify for exemption under the "reasonably necessary" standard articulated in EHC. Therefore, the remaining analysis must focus on whether any uses associated with the Eye Foundation satisfy that standard.

In making this analysis, it must be remembered that the Eye Foundation and the Knights are separate and distinct corporate entities with very different corporate purposes. One should also bear in mind that the Eye Foundation is not the applicant herein, and, that its corporate headquarters are located in Springfield, IL. Under these circumstances then, it appears that applicant neither has standing to raise the instant exemption complaint on the Eye Foundation's behalf (See, Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991)) nor uses the portion in dispute to further efficient administration thereof.

The above deficiencies are intensified by the Knights' failure to introduce any other evidence establishing what parts of the portion in dispute, if any, are reserved for uses that stem from applicant's association with the Eye Foundation. As consequence thereof, applicant has failed to satisfy the requirement, implicitly established in EHC, of proving that this affiliation gives rise to a specifically identifiable exempt use.

Part of the forgoing analysis might be interpreted as assuming that the Eye Foundation qualifies as a "charitable institution." However, this assumption fails to recognize that the Eye Foundation funded only 15 of the 70 research grant proposals which it received during 1993. More importantly, even though the Eye Foundation does offer other financial assistance to those in need of surgery or other treatments for eye disease, it does not make these benefits available to the general public. Rather, it restricts their obtainability to those who procure sponsorship from a member of applicant's order. For these reasons, I

conclude the Eye Foundation does not "dispense charity to all who need and apply for it" as required by Korzen.

Viewed in its totality, the preceding analysis demonstrates that applicant is not a "charitable institution" within the meaning of Illinois law. It further establishes that the portion in dispute is not subject to exemption by virtue of applicant's affiliations with KTEF or the Eye Foundation. Therefore, the Department's decision denying this portion exemption from 1993 real estate taxes should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that all of Cook County Parcel Numbers 13-09-404-015 and 13-09-404-041 not be exempt from real estate taxes for the 1993 assessment year.

Date

Alan I. Marcus,
Administrative Law Judge